

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DEBORA NOVAKOWSKI,

Civil Action No. 04-356E

Plaintiff,

Judge Sean J. McLaughlin
Electronically Filed

v.

ELAINE CHAO, SECRETARY OF LABOR,
and the UNITED STATES DEPARTMENT
OF LABOR,

JURY TRIAL DEMANDED

Defendants.

PLAINTIFF'S PROPOSED SUPPLEMENTAL JURY INSTRUCTIONS

AND NOW, comes the Plaintiff to the above-captioned action, by and through her undersigned attorney, and respectfully submit the following Proposed Supplemental Jury Instructions.

1. Proposed Supplemental Jury Instruction

Burden-Shifting

If the Plaintiff establishes the elements of a prima facie case, the employer must articulate a legitimate, non-discriminatory reason for its employment decision. Once such a justification is proffered, the burden then reverts to the Plaintiff to prove by a preponderance of the evidence that the articulated reason is a pretext. At all times, the Plaintiff bears the ultimate burden of proving that discrimination was a determinative factor in the adverse employment decision. The Plaintiff may succeed in this either directly by persuading you that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence.

If you find that the employer's proffered justification for its actions is pretextual, you are permitted, albeit not mandated, to return a verdict in the Plaintiff s favor. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 256, 67 L.Ed. 2d 207, 101 S.Ct. 1089 (1981). St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 125 L.Ed. 2d 407 113 S.Ct. 2742 (1993).

Respectfully submitted,

Dated: June 7, 2006

s/ John R. Linkosky

Attorney for Plaintiff

John R. Linkosky, Esquire

Pa. I.D. No. 66011

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Debora Novakowski

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Defendants.

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Plaintiff's Proposed Supplemental Jury Instructions has been *electronically filed* this 7th day of June, 2006.

Paul E. Skirtich, Esquire
Assistant U.S. Attorney
United States Department of Justice
U.S. Post Office & Courthouse
700 Grant Street, Suite 400
Pittsburgh, PA 15219

s/ John R. Linkosky
John R. Linkosky, Esquire
Attorney for Plaintiff